

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON**

CRAIG D. HANSON

Plaintiff,

v.

COUNTY OF KITSAP, WASHINGTON;  
and DAVID LYNAM, KITSAP  
COUNTY FIRE MARSHAL; and, JOHN  
AND JANE DOE, EMPLOYEE-  
AGENTS AND FORMER EMPLOYEE-  
AGENTS OF KITSAP COUNTY

Defendants.

**NO. CV 3:13-5388**

**PRETRIAL ORDER**

**I. JURISDICTION**

Jurisdiction is vested in this Court by virtue of Plaintiff's USERRA, 38 U.S.C. § 4323(b)(1)-(3), claim as allowed under 28 U.S.C. § 1331 and Plaintiff's Washington Law Against Discrimination claim, RCW 49.60, as allowed under 28 U.S.C. § 1367.

**II. CLAIMS AND DEFENSES**

A. Plaintiff will pursue the claims for relief at trial as listed in the Order of Clarification and Changing Caption (Dkt. 170).

1 B. Defendants' Statement Concerning Claims Remaining for Trial:

2 1. USERRA § 4311 (discrimination) and § 4316 (without cause discharge),  
3 not selecting Plaintiff for promotion an/or removal from fire investigation rotation for  
4 filing the ESGR complaint; and

5 2. WLAD (discrimination), not selecting Plaintiff for promotion and/or  
6 removal from fire investigation rotation for filing the ESGR complaint.

7 C. Defendants will pursue the following affirmative defenses:

8 1. Defendants would have taken the same actions and made the same  
9 decisions even if Plaintiff had not filed an ESGR Complaint.

10 **III. ADMITTED FACTS**

11 A. The following facts are admitted by the parties:

12 1. From March 13, 2007 to August 23, 2013, Mr. Hanson worked as Deputy  
13 Fire Marshal (DFM) for Kitsap County (County), served part-time with the Washington  
14 Army National Guard, and was supervised by David Lynam.

15 2. The Army National Guard activated Mr. Hanson from November 16,  
16 2009 to December 2, 2012.

17 3. Employees on the fire investigation rotation receive a higher rate of pay  
18 when performing fire investigation duties.

19 4. Among others, Dave Lynam supervised Jackie Blackwood, Tina Turner,  
20 and Craig Hanson.

21 5. Mr. Hanson complained to the Employer Support for Guard and Reserve  
22 on January 2, 2013.  
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1           4.       Whether Defendants willfully violated USERRA pursuant to 38 U.S.C. §  
2       4323(d)(1)(C).

3           5.       Whether Mr. Hanson is entitled to all relief demanded in his complaint  
4       pursuant to 38 U.S.C. § 4323(d), (e) and (h); and RCW 49.60.030.

5           6.       Whether the Court shall direct a verdict against Defendant as to liability  
6       under 38 U.S.C. § 4318.

7           7.       Whether Defendants' affirmative defenses should be struck, including:

8               (a)       “Defendants exercised reasonable care to prevent and promptly  
9       correct any unlawful discrimination and/or harassment, and Plaintiff  
10       unreasonably failed to take advantage of preventative or corrective opportunities  
11       Defendants provided or otherwise failed to avoid harm”, is not a cognizable  
12       affirmative defense to any USERRA claim.

13               (b)       “The injuries and damages, if any, claimed by Plaintiff were  
14       caused or contributed to by Plaintiff's own fault” is not a cognizable affirmative  
15       defense to any USERRA claim, and merely a general denial or other defense  
16       which merely alleges that Plaintiff has not met his burden of proof is not an  
17       affirmative defense.

18               (c)       “If Plaintiff suffered any damages, recovery therefor is barred or  
19       reduced by Plaintiff's failure to mitigate said damages” is insufficient by merely  
20       referencing the name of a defense without setting forth its elements or any  
21       factual basis for each of those elements.

22               (d)       “There is no causation between the alleged actions against  
23       Defendants and the injuries and/or damages claimed to have been sustained by  
24       Defendants and the injuries and/or damages claimed to have been sustained by  
25

1 Plaintiff' is not a cognizable affirmative defense to any USERRA claim and  
2 merely a general denial or other defense which merely alleges that Plaintiff has  
3 not met his burden of proof is not an affirmative defense.

4 (e) "Plaintiff's claims are barred by the doctrine of waiver" is  
5 insufficient by merely referencing the name of a defense without setting forth its  
6 elements or any factual basis for each of those elements.

7 (f) "Plaintiff's claims are barred by the doctrine of estoppel" " is  
8 insufficient by merely referencing the name of a defense without setting forth its  
9 elements or any factual basis for each of those elements.

10 (g) "Some of Plaintiff's claims may be barred by the statute of  
11 limitations" " is insufficient by merely referencing the name of a defense without  
12 setting forth its elements or any factual basis for each of those elements.

13 (h) "Defendants took no tangible employment action against Plaintiff,  
14 based on military service or any other unlawful discrimination" is not a  
15 cognizable affirmative defense to any USERRA claim and merely a general  
16 denial or other defense which merely alleges that Plaintiff has not met his burden  
17 of proof is not an affirmative defense.

18 (i) "Plaintiff's claim is barred under the substantial truth doctrine" is  
19 not a cognizable affirmative defense to any USERRA claim and merely a general  
20 denial or other defense which merely alleges that Plaintiff has not met his burden  
21 of proof is not an affirmative defense.  
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(j) Striking the request “that Defendants be allowed their actual costs and attorney’s fees herein” as USERRA explicitly allows only a prevailing Plaintiff may be awarded fees or costs of litigation.

B. Defendants’ Statement of the Issues:

1. Whether Plaintiff’s protected activity, filing an ESGR complaint, was a substantial or motivating factor in Defendants’ action not to promote Plaintiff and/or to remove him from the fire-investigation rotation.

2. If the jury answers Issue No. 1 affirmatively, then whether Defendants would have made the same decision even if Defendants had not taken Plaintiff’s act of filing an ESGR complaint into account.

3. If the jury answers Issue No. 2 affirmatively, then whether Plaintiff suffered damages because of Defendants’ action in not promoting Plaintiff or removing him from the fire-investigation rotation because he filed an ESGR complaint.

**IV. EXPERT WITNESSES**

A. Each party shall be limited to one expert witness on the issue of damages.

B. The names and addresses to be used by each party at the trial and the issue upon which each will testify is:

1. On behalf of Plaintiff: Dwayne Normandeau, 421 W. Riverside Ave. Ste. 460, Spokane, WA 99201. Mr. Normandeau will testify about Mr. Hanson's economic damages.

2. On behalf of Defendants: John E. Hamm, M.D., P.S., 515 Minor Avenue, Suite 250, Seattle, Washington, 98104, (360) 622 9496, will be called to testify regarding the nature and extent of Plaintiff’s intellectual, cognitive, and psychological

1 functioning as well as the nature and probable causes of Plaintiff's claimed emotional  
2 distress.

3 **V. OTHER WITNESSES**

4 A. On behalf of Plaintiff:

5 1. Jeff Rimack, 614 Division St, Port Orchard, WA 98366. Mr. Rimack will  
6 testify about his interactions with Mr. Hanson and Kitsap County's management,  
7 regarding Mr. Hanson, during the late 2012 and 2013 timeframe. *Possible witness.*

8 2. Craig Hanson, C/o Matt Crotty, 421 W. Riverside Ave. Ste. 1005,  
9 Spokane, WA 99201. Mr. Hanson will testify as to the nature of his claims, damages, and  
10 employment at Kitsap County. *Will testify.*

11 3. Penny Starkey, C/o Jacquelyn Aufderheide, 614 Division St, Port Orchard,  
12 WA 98366. Ms. Starkey will testify about Kitsap County policy, procedures, and  
13 documents. *Will testify.*

14 4. David Lynam, C/o Jacquelyn Aufderheide, 614 Division St, Port Orchard,  
15 WA 98366. Mr. Lynam will testify about Mr. Hanson's employment at Kitsap County.  
16 *Will testify.*

17 5. Jenny Hanson. C/o Matt Crotty, 421 W. Riverside Ave. Ste. 1005,  
18 Spokane, WA 99201. Jenny Hanson is Craig Hanson's wife. She can be contacted  
19 through counsel's address. If called, she will testify about her observations of Mr.  
20 Hanson upon Mr. Hanson's return to work at Kitsap County and what happened to her  
21 family after Mr. Hanson returned to work at Kitsap County. *May testify.*

22 6. Cody Hanson. C/o Matt Crotty, 421 W. Riverside Ave. Ste. 1005,  
23 Spokane, WA 99201. Cody Hanson is Craig Hanson's oldest son. He can be contacted  
24 through counsel's address. If called, he will testify about his observations of Mr. Hanson  
25 upon Mr. Hanson's return to work at Kitsap County. *May testify.*

1           7.     Jody Stewart, 820 Pacific Ave., Ste. 201, Bremerton, Washington 98337,  
2           (360) 620 3722. Ms. Stewart has been listed by the defense as a witness. Her address  
3           has already been supplied. She will testify about her counseling and treatment of  
4           Plaintiff. *May testify*.

5           B.     Will Testify On behalf of Defendants:

6           1.     Larry Keeton, 614 Division Street, Port Orchard, Washington, 98366, (360) 337-  
7           4973, will be called to testify regarding Kitsap County, the Kitsap County Department of  
8           Community Development (DCD) and the Fire Marshal's Office within DCD, his  
9           supervision of David Lynam and the Fire Marshal's Office, and the creation and posting  
10          of the DFM 2 position, and in general in defense of the claims remaining for trial and to  
11          the affirmative defense asserted by Defendants.

12          2.     David Lynam, 614 Division Street, Port Orchard, Washington, 98366, (360) 337-  
13          4973, will be called to testify about his role in DCD and the Fire Marshal's Office, the  
14          creation, posting, and recruitment of the DFM 2 position, the selection of Ms. Blackwood  
15          for the DFM 2 position including her qualifications and experience and Mr. Hanson's  
16          qualifications and experience, Mr. Hanson's performance and discipline, changes in Mr.  
17          Hanson's role in the fire investigation rotation, and in general in defense of the claims  
18          remaining for trial and to the affirmative defense asserted by Defendants.

19          3.     Jeff Rowe, 614 Division Street, Port Orchard, Washington, 98366, (360) 337-  
20          4972, will be called to testify as to the interviews for the DFM 2 position, the selection of  
21          Ms. Blackwood for the DFM 2 position, the discipline of Mr. Hanson in 2009, and in  
22          general in defense of the claims remaining for trial and to the affirmative defense asserted  
23          by Defendants.



1           4.     Wayne Senter, 6433 Wexford Avenue SW, Port Orchard, Washington, 98367,  
2     will be called to testify as to his knowledge, or lack thereof, of the fact that Plaintiff had  
3     filed an ESGR complaint in January 2013 and the County's organizational structure  
4     regarding the fire rotation, and his participation as an interviewer and rater for the DFM 2  
5     position.

6           5.     Warner Webb, Pierce County Fire Marshal, 2401 S. 35th Street, Tacoma,  
7     Washington, 98409, will be called to testify as to his knowledge, or lack thereof, of the  
8     fact that Plaintiff had filed an ESGR complaint in January 2013 and the County's  
9     organizational structure regarding the fire rotation, and his participation as an interviewer  
10    and rater for the DFM 2 position.

11          6.     Jonathan Dunaway, 309 NW 310th Street, Ridgefield, Washington, 98642, will be  
12    called to testify as to his knowledge, or lack thereof, of the fact that Plaintiff had filed an  
13    ESGR complaint in January 2013 and the County's organizational structure regarding the  
14    fire rotation, and his participation as an interviewer and rater for the DFM 2 position.

15          7.     Mia Alexander, 614 Division Street, Port Orchard, Washington, 98366, (360)  
16    337-4973, will be called to testify regarding her duties as a payroll services supervisor for  
17    Kitsap County, and her knowledge of the wages paid to Mr. Hanson, the County's pay  
18    scales, out-of-class pay and County policies and procedures relating to wages and  
19    benefits.

20          8.     Laura Osborne, 614 Division Street, Port Orchard, Washington, 98366, (360)  
21    337-3392, will be called to testify regarding Mr. Hanson's personal relationship with her  
22    as evidenced in emails, prior discipline, and health care records.



1 B. Defendants' Exhibits:

2 Defendants' #D-1: Interview Questions/scoring sheets for Jackie Blackwood.  
3 Rater: Wayne Senter.

4 Defendants' #D-2: Interview Questions/scoring sheets for Jackie Blackwood.  
5 Rater: John Dunaway.

6 Defendants' #D-3: Interview Questions/scoring sheets for Jackie Blackwood.  
7 Rater: Warner Webb.

8 Defendants' #D-4: Interview Questions/scoring sheets for Jackie Blackwood.  
9 Rater: Jeff Rowe.

10 Defendants' #D-6: Jackie Blackwood's Performance Evaluations 1993-2002.

11 Defendants' #D-7: Jackie Blackwood's Performance Evaluations 2006-2012.

12 Defendants' #D-9: Kitsap County's January 14, 2013 Memorandum re Out of  
13 Class work Assignment for Craig Hanson.

14 Defendants' #D-14: Jackie Blackwood application for the DFM 2 position.

15 Defendants' #D-16 – January 2008 Emails and Memorandum concerning Jackie  
16 Blackwood's qualifications and experience for the DFM 1 position.

17 Defendants' #D-21 – Interview Schedule showing scores of the panel.

18 Defendants' #D-22 – Hanson DD-214 Oct 2011

19 **Authenticity stipulated, admissibility disputed:**

20 A. Plaintiff's Exhibits.

21 1. Kitsap County Department of Community Development Organization Chart  
22 (listing Craig Hanson Deputy Fire Marshal 2 (OOC)).

23 2. Craig Hanson's DD214 (2007).

24 3. Craig Hanson's 2007 Job Application.

25 4. Craig Hanson's June 2007 DFM 2 Job Application.

10. Kitsap County's April 14, 2009, Request for DFM 2 out of class work  
assignment.

11. Kitsap County's Extra Help Policy.

12. Kitsap County's Request to Fill Extra Help Position re Brad Wiggins and Shawn Shepherd.

14. Email from Craig Hanson to David Lynam dated December 5, 2012.

15. Email from Craig Hanson to David Lynam dated December 17, 2012.

16. Email from Craig Hanson to David Lynam dated January 28, 2013.

17. Email from Craig Hanson to David Lynam dated February 14, 2013.

18. March 7, 2013, chart note from VA re Craig Hanson.

24. Craig Hanson Reference letters.

25. Kitsap County's pay codes.

33. Plaintiff Requests for Admission Nos. 27, 48, and 49 and Kitsap County's responses to thereto.

34. Extra help employees Brad Wiggins and Shawn Shepherd's pay records for 2013.

B. Defendants' Exhibits.

Defendants' #D-5: Disciplinary records of Craig Hanson.

Defendants' #D-8: Email dated July 23, 2012 from David Lynam to Craig Hanson re possible DFM II opportunity.

Defendants' #D-15: Memorandum of "Craig Hanson Performance Issues 5/1/13.

Defendants' #D-17: Instant messages between Laura Osborne and Craig Hanson.

Defendants' #D-18: January 2013 Email string between Craig Hanson and Loren Chilson.

Defendants' #D-19: March 2013 Email from Craig Hanson to Loren Chilson.

**Authenticity and admissibility disputed:**

A. Plaintiff's Exhibits.

20. Document labeled "Fire Investigations of Craig Hanson"

28. City of Boise, Idaho's Policy Manual.

29. City of Boise pay records for Craig Hanson.

B. Defendants' Exhibits.

Defendants' #D-10: Letter from Therapist Kimberly Green dated 2/16/2014.

Defendants' #D-11: Letter from Therapist Kimberly Green dated 3/27/2014 with attached records of Jenny Hanson.

Defendants' #D-12: Medical records of Craig Hanson produced by Jody Stewart, MA.

Defendants' #D-13: Letter and Certificate of Appreciation issued by ESGR to David Lynam in 2009.

Defendants' #D-20: Payroll Calculations – DFM 1 verses DFM2, and Out-of-Class Pay for the Period 5/1/13 to 08/23/13.

Defendants' #D-23 –Kitsap County Department of Community Development 2013 Organization Chart

Defendants' #D-24 – Letter from Dr. Lumley dated June 6, 2013

Defendants' #D-25 – Press Release

**VII. ACTION BY THE COURT**

A. This case is scheduled for trial before a jury on August 18, 2014.

B. Trial briefs shall be submitted to the court on or before August 12, 2014.

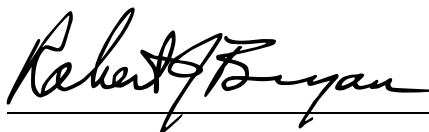
C. Jury instructions requested by either party shall be submitted to the court on or before August 12, 2014. Suggested questions of either party to be asked of the jury by the court on voir dire shall be submitted to the court on or before August 12, 2014.

D. The jury will have 8 members.

1 This order has been approved by the parties as evidenced by the signatures of their  
2 counsel. This order shall control the subsequent course of the action unless modified by a  
3 subsequent order.

4 This order shall not be amended except by order of the court pursuant to agreement of the  
5 parties or to prevent manifest injustice.

6 Dated this 12<sup>th</sup> day of August, 2014.

7  
8 

9  
10 ROBERT J. BRYAN  
11 United States District Judge  
12

13 FORM APPROVED

14 CROTTY & SON LAW FIRM, PLLC

15 Matthew Z. Crotty

16 MATTHEW Z. CROTTY  
17 WSBA #39284, ISB #8653  
18 421 W. Riverside Ave. Ste 1005  
19 Spokane, WA 99201  
20 Telephone: (509) 850-7011  
21 Email: matt@crottyandson.com

22 RUSSELL D. HAUGE  
23 Kitsap County Prosecuting Attorney  
24

25  
26 JACQUELYN M. AUFDERHEIDE, WSBA No. 17374  
27 DEBORAH A. BOE, WSBA No. 39365  
28 CHRISTY PALMER, WSBA No. 42560  
29 Deputy Prosecuting Attorneys  
30 Attorneys for Defendants

**CERTIFICATE OF SERVICE**

I hereby certify that on the 1st day of August 2014,

1. I served the foregoing via the Court's ECF system to:

Jacquelyn Moore Aufderheide

Deborah Ann Boe

Christine M. Palmer

Thomas G. Jarrard

Michael B. Love

Matthew Z. Crotty

2. I have caused to be hand-delivered the document to the following participants at the addresses listed below: none.

/s Thomas G. Jarrard  
Thomas G. Jarrard  
Law Office of Thomas G. Jarrard, PLLC  
1020 N. Washington Street  
Spokane, WA 99201  
(425) 239-7290